



Notice

Tax Preparers Property Tax Relief Income Tax Credit

Cory Fong
Tax Commissioner

October 22, 2008

A number of questions have been asked about how the North Dakota property tax relief income tax credits created by the 2007 North Dakota Legislature will affect a taxpayer's federal income tax situation. In June 2007 the Office of State Tax Commissioner had formally requested an opinion from the IRS on this matter.

In December 2007 the IRS issued a Chief Counsel Advice (CCA) in response to the request by the Office of State Tax Commissioner. On April 4, 2008, [CCA 200814022](#) was officially made available for public inspection on IRS's website in the Freedom of Information Act (FOI) Electronic Reading Room, which can be located under the "Tax Professionals" tab.

Following is a summary of the IRS's conclusions contained in the CCA on the federal income tax treatment of the North Dakota property tax relief income tax credits:

- For all taxpayers, the two new income tax credits provided under the property tax relief legislation are treated no differently than any other state income tax credit.
 - To the extent a credit reduces the state income tax liability, there is no effect on a taxpayer's federal income tax situation.
 - To the extent a credit results in or increases a refund of state income tax withheld or estimated tax paid, the taxpayer must make a determination of whether the state income tax refund must be included in income under the federal tax benefit rule.
- If an individual taxpayer receives a property tax relief certificate¹ for the amount of an unused residential and/or agricultural property income tax credit, and the taxpayer receives a refund (in cash or by check) from the county for the certificate, the following apply:
 - If the refund is received in a tax year following the tax year in which the related property taxes were paid, the taxpayer must make a determination of whether the refund must be included in income under the federal tax benefit rule.²
 - If the refund is received in the same tax year in which the related property taxes were paid, the property taxes paid must be reduced by the amount of the refund in determining the amount that may be deducted for federal income tax purposes.

¹ A property tax relief certificate may result from the filing of a North Dakota individual income tax return—either Form ND-1 or Form ND-2—or from the filing of Form ND-3, Request For Residential And Agricultural Property Tax Credit Certificate.

² The federal tax benefit rule provides that the recovery of an amount deducted in an earlier tax year is included in income in the current (recovery) tax year, but only to the extent the recovered amount reduced the earlier tax year's federal income tax liability (see I.R.C. § 111).

- If an individual taxpayer receives a property tax relief certificate¹ for the amount of an unused residential and/or agricultural property income tax credit, and the county does not issue a refund but applies the amount of the certificate to reduce a property tax liability of the taxpayer, the following apply:
 - The amount of the certificate is not treated as income for federal income tax purposes.
 - A deduction of property taxes for federal income tax purposes must be based on the reduced property tax liability.

Assistance

If you have any questions about this notice, please contact Joseph J. Becker, Education and Research Section, as follows:

Phone: Direct 701.328.3451
 Toll free 1.877.328.2760 (ask for extension 8-3451)
E-mail: jjbecker@nd.gov